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No. .....

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In The
Supreme Court of the United States
October Term, 1982

VICTORY BAPTIST TEMPLE, INC.,
Petitioner,

vs.

INDUSTRIAL COMMISSION OF OHIO and
BUREAU OF WORKERS' COMPENSATION,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Court of Appeals for the
Ninth Judicial District, Lorain County, Ohio

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QUESTIONS PRESENTED

1. Whether it is necessary for the state to prove (a) that mandatory participation in a statewide system of workers' compensation is the only way to ensure the latter's fiscal vitality and soundness; and (b) that no less drastic means exists to implement that system as to a church or churches, where it is claimed that a workers' compensation act as applied violates the right to religious freedom as guaranteed by the first and fourteenth amendments.

2. Whether a state constitutional reference to the establishment of a workers' compensation system to be created by "compulsory contribution thereto by employers" and a broad statutory definition of "employer" and "employee" in a workers' compensation act demonstrate a clearly expressed affirmative intention on the part of the legislature to include churches under coverage of the Act.

3. Whether the granting of summary judgment is improper where (a) bona fide constitutional claims involving first amendment freedoms exist, and (b) an indefinite and inadequate factual foundation hinders a full exploration of such claims, a ruling on which could affect many others in a similar position.

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To the Court of Appeals for the Ninth Judicial District, Lorain County, Ohio

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

VICTORY BAPTIST TEMPLE, INC., the Petitioner herein, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Ninth Judicial District, Lorain County, Ohio, entered in the above mentioned case on March 24, 1982. Petitioner's Motion requesting the Supreme Court of Ohio to direct the Court of Appeals for Lorain County to certify its Record was overruled on June 30, 1982.

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Judicial District, Lorain County, Ohio, in *Victory Baptist Temple, Inc. v. Industrial Commission of Ohio,* is unreported but is printed in Appendix B hereto, at APP. 2, *infra.* The opinion of the Court of Common Pleas for Lorain County is unreported but is printed in Appendix C hereto, *infra,* at APP. 11.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Judicial District, Lorain County, Ohio (Appendix B, *infra,* at APP. 2) was entered on March 24, 1982. The Supreme Court of Ohio overruled Petitioner's Motion for an Order Directing the Court of Appeals for Lorain County to Certify its Record on June 30, 1982. Appendix A, *infra,* at APP. 1). The jurisdiction of the Supreme Court is invoked under 28 U. S. C. § 1257 (3).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The following provisions of the United States Constitution, the Constitution of the State of Ohio, and the Ohio Revised Code are involved in the questions presented:

First Amendment:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Fourteenth Amendment:

> "... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Ohio Constitution, § 7, Art. I—Rights of conscience; the necessity of religion and knowledge. APP. 20.

Ohio Constitution, § 35, Art. II—Workmen's compensation. APP. 20.

Ohio Revised Code, § 4123.01—Definitions. APP. 22.

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Ohio Revised Code, § 4123.37—Amenable employer; assessment; hearing. APP. 32.

Ohio Revised Code, § 4123.54—Compensation in case of injury, disease or death; agreement if work performed in another state; employers temporarily in Ohio. APP. 34.

Ohio Revised Code, § 4123.99 (C)—Penalties. APP. 37.

STATEMENT OF THE CASE

Victory Baptist Temple, Inc., Petitioner herein, is an independent and fundamentalist church that believes in and adheres to the Bible as the inspired and inerrant Word of God. It is a corporation not-for-profit under the laws of Ohio. Petitioner conducts several "ministries," that is, activities of the church which have biblical objectives as their sole purpose. Persons working in these ministries do so either on a voluntary basis or for financial remuneration depending on the circumstances. Victory Baptist possesses a Scriptural mandate to care for and maintain members of the church, particularly its employees, in time of need so that none of its people will be without food, clothing, shelter or other essentials due to accident or illness.[1]

On or about September 13, 1977, Petitioner requested a rating inspection by representatives of the Industrial Commission of Ohio and the Bureau of Workers' Compensation, the Respondents herein, the state agencies charged with the responsibility of implementing the provisions of the Workers' Compensation Act after their representatives had made Victory Baptist aware of the existence of the Act (O. R. C. § 4123.01, et seq.). In December of 1978, Victory Baptist was notified by Respondents that the church must submit a payroll report and remit premiums to the Industrial Commission, and further, was notified that if Petitioner did not comply with provisions of the Act, proceedings would be commenced under O. R. C. Sec. 4123. 37 and Sec. 4123.99 (C) which provide for fines and imprisonment. APP. 32 and 37. The church was informed

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[1]Distributing to the necessity of saints; given to hospitality. Romans 12:13.

that attachment of church property could also result. O. R. C. § 4123.12. APP. 25. Petitioner refused to submit to such demands for reasons of religious objection thereto. Submission to coverage under the Act would, Victory Baptist sincerely believes, be a flagrant usurpation of its duties under Romans 12:13. Petitioner holds a firm religious conviction that it would be a sin to remit payment of church funds as premium contributions to the state workers' compensation system in that the former are designated solely for biblical purposes. Finally, coverage of the Petitioner under the Act would, it believes, permit state surveillance of church internal affairs and records. O. R. C. §§ 4123.23 and 4123.26. APP. 25 and 26. *See,* Affidavits of Rev. Loser and Rev. Woodside.

On September 10, 1979, Petitioner filed the within action seeking declaratory and injunctive relief against Respondents averring, *inter alia,* as follows:

> (15) The application to plaintiff of the Ohio Workers' Compensation Law immediately threatens to impair plaintiff's right to the free exercise of religion and violates the prohibition of any law respecting the establishment of religion, both as provided in the First Amendment of the Constitution of the United States and made applicable to the states by the Fourteenth Amendment.
>
> • • •
>
> (26) The free exercise and establishment clause of the First Amendment of the Constitution of the United States forecloses jurisdiction by defendants' over plaintiff church because:
>
> (a) exercise of jurisdiction by defendants would give rise to serious constitutional questions; and
>
> (b) government entanglement in the affairs of plaintiff church would occur; and

(c) it is the intent of the judiciary to avoid constitutional questions; and

(d) there is no clearly expressed affirmative intention of the General Assembly that churches shall be subject to the Workers' Compensation Law and to jurisdiction by defendants.

In August of 1981, the parties herein filed respective motions for summary judgment pursuant to Rule 56 of the Ohio Rules of Civil Procedure, such motions being accompanied by stipulation of fact, affidavits on behalf of both sides, and an exhibit on behalf of Respondent. On October 2, 1981, based upon the written motions and accompanying evidence and without oral hearing, the lower court issued an Order and Opinion granting Respondents' motion while denying that of Victory Baptist, and more specifically holding as follows:

> The Court finds O. R. C. Chapters 4121 and 4123 do apply to plaintiff and its clerical and educational employees.
>
> • • •
>
> . . . such application is not violative of the First Amendment.

APP. 13.

On October 30, 1981, notice of appeal to the Court of Appeals for the Ninth Judicial District was duly filed. On March 24, 1982, the appellate court affirmed the decision of this lower court as follows in pertinent part:

> In the instant case, the language and legislative history admits to no other conclusion than that the General Assembly intended to include churches and their employees within the protection of the Workers' Compensation Law.
>
> • • •

> . . . (w)e find no constitutionally required exemption for appellant from the operation of the Workers' Compensation Act.
>
> • • •
>
> There being no genuine issue of material fact between the parties, the trial court properly granted appellee's motion for summary judgment pursuant to Civ. R. 56 (C).

APP. 5 and 9.

On April 23, 1982, Petitioner filed a notice of appeal to the Supreme Court of Ohio. On June 30, 1982, considering Petitioner's memorandum in support of jurisdiction as a motion for an order directing the court of appeals to certify its Record, the Supreme Court overruled same. APP. 1. While the Order of the Supreme Court of Ohio did not rule on the merits of the case at bar, Petitioner's memorandum in support addressed the issues set forth in the within petition as follows:

> *Proposition of Law No. 1*
>
> When a church demonstrates a sincerely-held religious objection to participation in the Ohio workers' compensation system and its accompanying investigative and enforcement statutes, and also demonstrates a religiously mandated duty to, among other things, care for and maintain the injured and needy employees of the church, then the burden shifts to the state to offer evidence demonstrating that the exclusion of that church, and other churches of like religious objection and duty, from participation in the workers' compensation system would undermine the fiscal vitality, soundness, and administration of the system, and further, that mandatory participation in the system by those churches is the only way to insure the fiscal vitality, soundness, and proper administration thereof.
>
> • • •

Proposition of Law No. 2

When a church demonstrates a sincerely-held religious objection to coverage under the Workers' Compensation Act, it is incumbent upon the court to determine whether or not such coverage would give rise to serious constitutional questions. If so, the court must then identify a clearly expressed affirmative intention on the part of the legislature before concluding that the Act covers that church as well as other churches of like religious objection.

• • •

Proposition of Law No. 3

The trial and reviewing courts are under a duty to view the evidence in support of and in opposition to a motion for summary judgment most strongly in favor of the party opposing the motion; are under a duty to give the latter party the benefit of all reasonable inferences drawn from such evidence; and are under a further duty to accept as true the evidence in opposition to that motion.

It is from the ruling of the Court of Appeals for the Ninth Judicial District, Lorain County, Ohio that Petitioner prays a writ of certiorari issue.

REASONS FOR GRANTING WRIT

1. **Certiorari should be granted in order to determine the appropriate burdens of proof and also the governmental interests of the state when first amendment rights are violated by a statewide system of compensation.**

In finding that no claims of religious freedom by the Petitioner mandated exemption from participation in and

coverage under the Ohio Workers' Compensation Act (O. R. C. § 4123.01 et seq.), the Court of Appeals for the Ninth Judicial District (appellate court) found this Court's recent decision in *United States v. Lee*, — U. S. —, 102 S. Ct. 105, 71 L. Ed. 2d 127 (1982) to be "controlling."[2] APP. 7. If *Lee* is pivotal in a court's decisionmaking process when such court is confronted with a given clash between a first amendment right and a mandatory statutory plan of compensation, then, Petitioner submits, the appellate court herein erred by improperly applying this Court's analysis in *Lee* to the case at bar, as will be seen below. Notwithstanding, important questions arise as to whether the facts and circumstances in *Lee* render it so materially distinguishable from those found in the cause herein as to render its use inappropriate. Finally, in closely tracking the *Lee* analysis in its Opinion, the appellate court herein remained silent on the state's burden, if any, of demonstrating that no alternative means exists for implementing any perceived governmental interest espoused under the Ohio Workers' Compensation Act. For the reasons given below, certiorari should be granted in order to clarify this Court's position on the relevancy of such burden on the state when free exercise rights are at issue.

a. The appellate court applied U. S. v. Lee improperly.

In *Lee* this Court ruled that the imposition of social security taxes is not unconstitutional as applied to Mr.

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[2]Petitioner notes that as the *Lee* decision was not rendered until February 23, 1982, the trial court herein was unaware of such decision when it issued its Order and Opinion on October 2, 1981. APP. 11.

Lee, a self-employed farmer of the Old Order Amish faith, who claimed a sincerely-held and biblically based objection to the receipt of public insurance benefits and to payment of taxes in his capacity as an employer, to support such insurance. 71 L. Ed. 2d at 127, 128, 132-134. While acknowledging the sincerity of Mr. Lee's beliefs, this Court described the "overriding governmental interest" as follows:

> Because the social security system is nationwide, the governmental interest is apparent. . . . The social security system is by far the largest domestic governmental program in the United States today, distributing approximately $11 billion monthly to 36 million Americans. . . . This mandatory participation is indispensible to the fiscal vitality of the . . . system . . . (W)idespread individual voluntary coverage . . . would undermine the soundness of the . . . program . . . (and) would be almost impossible, to administer.

Id. at 133.

Thus, the "fiscal vitality" and "soundness" of the social security system was deemed of such paramount importance by this Court so as to warrant the overriding of Mr. Lee's legitimate religious objection. However, in the case at bar, the appellate court ruled in its Opinion that the overriding governmental interest in mandating participation by Victory Baptist in the state workers' compensation system is "in compensating workers and their dependents for death, occupational disease, and injury during the course of employment." APP. 8. However commendable such a goal surely is, Petitioner submits that its use was inappropriate and in error under *Lee*. No consideration was given nor reference even made to a stated interest in the "soundness" of the system and the perceived

effect of Petitioner's religiously-based objections and ultimate exemption from coverage therefrom. Further, the Respondents failed utterly to offer any evidence in this regard. While the Victory Baptist is not in position qualifying it to shed light on the monetary aspects of Ohio's workers' compensation system, it has in any event, taken the liberty of offering a viable alternative means of compensating church workers under its own biblical mandate. Romans 12:13.

In granting certiorari herein, this Court could elaborate on appropriate governmental interest(s) to be considered by a court when weighing such interest(s) against religious objections to systems of compensation.

b. The case at bar is materially distinguishable from U. S. v. Lee.

This case raises important questions which need to be addressed by this Court as to whether the rationale in *Lee* is appropriate precedent when a party claims that a statewide system of mandatory compensation interferes with and infringes upon free exercise of religion. Petitioner submits that the interests of the State of Ohio in maintaining a statewide workers' compensation system are materially distinguishable from the interests of the United States government in maintaining a nationwide system of retirement benefits for all residents of the United States which was the subject of review in *Lee*; furthermore, both courts herein below failed to sufficiently examine the interests of the state in maintaining such a benefit program for Ohio workers and why those interests could be satisfied only if churches such as Victory Baptist were compelled to participate.

The federal social security system is "by far the largest domestic governmental program in the United States today" with contributions being derived from and benefits going to potentially *all* American citizens who meet the eligibility requirements. Id. at 133. However, the Ohio workers' compensation system is merely *statewide* effecting *only* certain employers for purposes of contribution thereto and only certain employees and their dependents who fall within its coverage. Judicial notice may be appropriate for the proposition that the proportion of Americans who grow old and become entitled to social security retirement payments from the federal government is much greater than the proportion of Ohio workers who are disabled in the course of their employment and who thereby become eligible for reimbursement from the state insurance fund. In the cause herein, petitioner is a church, not an individual, as is found in *Lee*, objecting on religious grounds to participation in the *statewide* workers' compensation system. In this regard, it would not be unreasonable to assume that there are fewer churches than persons located within the boundaries of the State of Ohio. Furthermore, only those Ohio churches capable of demonstrating sincerely-held religious objections similar to those of Petitioner would be entitled to an exemption from mandatory participation. Thus, the potential for a "myriad of exceptions" of which this Court was apprehensive in *Lee* and of which the appellate court herein was concerned is greatly reduced. Id. at 134.

From a monetary standpoint, *Lee* emphasizes that the social security system distributes approximately $11 billion monthly to 26 million Americans. Id. at 133. On that basis this Court found that "mandatory participation" in

the social security system "is indispensible to the *fiscal vitality*" of the system making the government's interest in this regard "very high." Id. at 133. Thus, Mr. Lee could not care for the elderly and needy Amish people solely under methods in conformance to his religious beliefs outside of the social security system because, the Court ruled, *it would undermine* the "fiscal vitality" and "soundness" of the *national system.*

For the foregoing reasons, Petitioners submit that it is essential that this Court offer guidance on the above-stated distinguishing elements of its decision in *Lee* and point out the error of the appellate court herein in misusing same.

c. Whether the less drastic means test remains relevant.

As early as *Cantwell v. Connecticut,* 310 U. S. 296, 304 (1940) this Court declared that the state's "power to regulate" in the area of protected freedoms "must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedoms." The court has likewise applied this less drastic means test to cases involving claims of infringement upon free exercise of religion. Beginning with this Court's ruling in *Sherbert v. Verner,* 374 U. S. 398, 406, 407 (1963) (alleged abuse of the unemployment compensation fund) and continuing with *Wisconsin v. Yoder,* 406 U. S. 205, 215, 218, 221 (1972) (alleged violation of compulsory school attendance laws by Amish) and recently in *Thomas v. Review Board of Indiana Employment Security Division,* 450 U. S. 707, 718 (1981), it has been consistently held that upon the demonstration of a sincerely-held religious belief the free exercise of which is

burdened by some statutory requirement, the state must not only show a compelling interest which justifies the infringement but also that no less restrictive alternative means of satisfying that interest exists. Yet in the case at bar, the appellate court offered no indication that it deemed crucial the Respondent's failure to demonstrate that no less restrictive alternative means of satisfying O. R. C. § 4123.01 et seq. exists.

In its analysis of Mr. Lee's constitutional claim, this Court utilized the first and second tier of the three part test found in *Thomas, Yoder,* and *Sherbert, supra,* holding that while the social security system interferes with the free exercise of Amish belief "(t)he state may justify a limitation on religious liberty by showing . . . an overriding governmental interest." 71 L. Ed. 2d at 132. It was found in that the government's interest in "mandatory and continuous participation in and contribution to the social security system is very high." Id. at 133. However, this Court did not discuss the burden on the state to show that no less drastic means was available. Rather, the "remaining inquiry" by the Court was "whether accommodating the Amish belief will unduly interfere with fulfillment of the governmental interest." Id. at 133. Because this could potentially impose a lesser burden of proof on the state when first amendment claims are raised against the enforcement of government compensation systems such as that created under the Ohio Workers' Compensation Act, it is important that certiorari be granted in order that this Court might clarify the role, if any, of the less drastic means test in regard to such claims.

In contrast to the test in *Thomas, Yoder,* and *Sherbert, supra,* where the state was required to show that no less

drastic means were available to accomplish a compelling interest, the state under the *Lee* rationale would only be required to show that "accommodating" the constitutional claim will "unduly interfere" with the state's compelling interest. The state's interest, rather than the rights guaranteed and protected by the first and fourteenth amendments, would be in a preferred position or an assumed standpoint of priority.

2. Certiorari should be granted in order to determine whether a statewide system of compensation includes in its coverage a church or churches claiming serious violation of constitutional rights.

In *NLRB v. Catholic Bishop of Chicago*, 440 U. S. 490 (1979), this Court considered the assertion that the National Labor Relations Board could exercise jurisdiction over religious schools. In denying such jurisdiction to the NLRB, the Court undertook to examine the legislative history of the National Labor Relations Act:

> [I]t is encumbent upon us to determine whether the board's exercise of its jurisdiction here would give rise to serious constitutional questions. If so, we must first identify "the affirmative intention of the Congress clearly expressed" before concluding that the act grants jurisdiction.

440 U. S. at 501. The Court observed that not only conclusions of the Board in resolving employer/union disputes infringe upon the first amendment rights of the employer, but that "the very process of inquiry" leading to those conclusions could so infringe. Id. at 504.

In the case at bar, there is no indication whatsoever, Petitioner submits, that the Ohio General Assembly expressly intended O. R. C. § 4123.01 et seq. to include churches such as Victory Baptist under its coverage. However, the appellate court, in citing Sec. 35, Art. II, of the Ohio Constitution which calls for the establishment of a workers' compensation system with "compulsory contribution thereto by employers" and O. R. C. § 4123.01 (A) and (B) which define "employer" and "employee" respectively in broad and general terms, ruled that "the language and legislative history admits to other conclusion than that the General Assembly intended to include churches and their employees" under the Act. APP. 5 and 6. This was error. Petitioner submits that none of the above amounts to a "clear expression of an affirmative intention." However, certiorari should be granted in order to decide the important issue of whether "catch-all" statutory language such as that found in Sec. 35, Art. II of the state constitution and O. R. C. § 4123.01 (A) and (B) indeed satisfies this Court's prescribed test. Additionally, Petitioner refers the Court to Section 7 of Article I of the Ohio Constitution which places a "duty" on "the General Assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its own mode of public worship." APP. 20.

Petitioner notes one further point in this regard. O. R. C. § 4123.54 calls for an inquiry into aspects of the relationship between the church and its workers. APP. 34. The "very process" of that inquiry could place the Respondents in the position of examining church doctrine and church authority, and of rendering a decision based upon that examination. For example, a determination of

whether a church employee was injured while acting in the course of his employment or on behalf of his employer, the church, could well entail an interpretation of church doctrine and an examination of the church's own religious mission. Again, it was the *potential* threat to first amendment freedoms posed by such an inquiry that this Court warned against in *NLRB v. Catholic Bishop,* and whether such an inquiry would *actually* result in an administrative interpretation of church doctrine and authority is of no consequence.

3. Certiorari should be granted to decide important questions concerning the appropriateness of summary judgment in cases involving first amendment claims.

The opinion of the appellate court herein presents important questions not heretofore addressed by this Court concerning the role, if any, that summary proceedings play when the party opposing a summary judgment motion makes claims of interference by the state with first amendment freedoms. Victory Baptist submits that the court erred in affirming the granting of summary judgment. Not only are there genuine issues of material fact remaining for further evidentiary proceeding, but because petitioner presents bona fide first amendment claims, which could affect many others in the State of Ohio holding similar beliefs and positions, the cause herein should have, at the very least, been remanded to the lower court for amplification of the record. Thereupon, petitioner's claims could have been more closely scrutinized.

This Court has long held that when considering the evidence in support of and in opposition to a motion for

summary judgment, a court is under a duty to view such evidence most strongly in favor of the party opposing the motion, giving that party the benefit of all reasonable inferences. *U. S. v. Diebold*, 369 U. S. 654, 655 (1962). However, when such opposing party presents constitutional claims or defenses, the duty of the Court, as discussed below, is more stringent.

On the basis of the pleadings, stipulation of fact, four affidavits and one exhibit, the appellate court herein affirmed the granting of summary judgment in favor of the Industrial Commission and Bureau of Workers' Compensation.[3] In summary fashion, without the benefit of a full evidentiary hearing before the trier of fact, the court allowed the overriding of Victory Baptist's free exercise rights by the Respondents' interest in the provisions of the Workers' Compensation Act. This was error.

Kennedy v. Silas Mason Co., 334 U. S. 249, 251, 256 (1948) involved the application of the overtime provisions of the Fair Labor Standards Act to certain persons who worked in a government-owned plant producing munitions. This Court acknowledged therein that when a decision on an issue could potentially affect the rights of many others (in that case other workers), "(n)o conclusion in such a case should prudently be rested on an indefinite factual foundation." This Court affirmed such an approach in *Phillips v. Martin Marietta Corp.*, 400 U. S. 542, 544 (1971) (summary judgment is improper when an inadequate record impairs resolution of important issues involving pur-

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[3]The stipulations herein were not considered the sole evidence. *See, Cunningham v. J. A. Meyers, Co.*, 176 Ohio St. 140 (1964). Also, APP. 2.

ported violations of the Civil Rights Act of 1964). In the cause herein, the summary disposition of petitioner's constitutional claims will have a potentially adverse effect on other churches located in Ohio which hold similar beliefs.[4]

The case of *Perry v. Sinderman*, 408 U. S. 593 (1972) is also pertinent. This Court ruled that where bona fide constitutional claims exist (in that case, the right of a professor to publicly criticize policies of the college administration), summary judgment is improper "without full exploration of the issue." Id. at 595, 598. Not only did the cause herein present "bona fide" first amendment claims, but also genuine questions of material fact which have yet to be addressed at a hearing on the merits. A review of the record shows that it is replete with instances where, upon examining the affidavits in support of and in opposition to the Respondents' summary judgment motion, the lower court either resolved questions of material fact or brought into question the truth or falsity of the religious beliefs of the Petitioner. This was error. *U. S. v. Diebold, supra; see U. S. v. Ballard*, 322 U. S. 78 (1943) (the truth or falsity of a religious stance is not subject to examination).

Perhaps the most striking example of a material question of fact in the case at bar is the question of the existence of any alternative less drastic means by which the Industrial Commission and the Bureau of Workers' Com-

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[4]Attached as Appendix E is a list of churches submitted to the Ohio Supreme Court, of which Petitioner is aware, who hold similar religiously based objections to coverage to the Act.

pensation can have their interest, as exemplified under the Act, fulfilled while at the same time refraining from an interference with Victory Baptist's free exercise rights. In their pleadings, Respondents have argued that the "self-insured" provision of the Act under O. R. C. § 4123.35 is available to the Petitioner. APP. 27. *See, First National Bank of Arizona v. Cities Service Co.*, 391 U. S. 253, 289 (1968) (a party cannot rest on assertions made in unverified pleadings, briefs, or oral argument of counsel). Initially, Victory Baptist would note that a scrutiny of O. R. C. § 4123.35 demonstrates that *any* employer would encounter awesome difficulties in attempting to comply with its provisions. For purposes of considering Respondents' motion, it can be inferred that appellant *could not* in good conscience participate. *U. S. v. Diebold, supra.* Both parties have offered conflicting alternatives (Victory Baptist with its biblical mandates under Romans 12:13 and the Industrial Commission with the provisions of O. R. C. § 4123.35); a *material fact* issue has been raised as to which alternative, if either, is indeed the most acceptable. A full evidentiary hearing before the trier of fact is necessary to resolve this dilemma.

Therefore, neither was there a definite factual foundation as called for in *Kennedy*, nor were all the relevant issues "fully explored" as required under *Perry*. For the foregoing reasons, it was improper for the Court of Appeals for the Ninth Judicial District to affirm the granting of summary judgment in favor of Respondents.

CONCLUSION

WHEREFORE, Petitioner respectfully prays that a writ of certiorari be granted.

Respectfully submitted,

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Cleveland, OH 44130
(216) 845-6800

APPENDIX A

1982 TERM
To wit: June 30, 1982

No. 82-768

THE STATE OF OHIO
City of Columbus.

VICTORY BAPTIST TEMPLE, INC.,

Appellant,

vs.

INDUSTRIAL COMMISSION OF OHIO ET AL.,

Appellees.

MOTION FOR AN ORDER DIRECTING
THE COURT OF APPEALS

For Lorain County

TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00 paid by Gibbs & Craze.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this_____day of _____19_____

_____ *Clerk*

_____ *Deputy*

APPENDIX B

IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT

State of Ohio, County of Lorain, ss:

C. A. NO. 3262

VICTORY BAPTIST TEMPLE, INC.,

Plaintiff-Appellant,

vs.

INDUSTRIAL COMMISSION OF OHIO, et al.,

Defendants-Appellees.

APPEAL FROM JUDGMENT ENTERED IN THE COMMON PLEAS COURT COUNTY OF LORAIN, OHIO

CASE NO. 84897 79

DECISION AND JOURNAL ENTRY

Dated: March 24, 1982

This cause was heard January 28, 1982, upon the record in the trial court, and the briefs. It was argued by counsel for the parties and submitted to the court. We have reviewed each assignment of error and make the following disposition:

QUILLIN, J.

Victory Baptist Temple, Inc., plaintiff-appellant, appeals a judgment of the Court of Common Pleas that the Ohio Workers' Compensation Laws as applied to the appellant are constitutional. We affirm.

The stipulations and affidavits of the parties reveal the following facts. The defendants-appellees, the Indus-

trial Commission of Ohio (Commission) and the Bureau of Workers' Compensation (Bureau) are duly authorized agencies of the State of Ohio which are employed to administer the Workers' Compensation Law. R. C. Chapter 4123.

The plaintiff-appellant, Victory Baptist Temple, Inc. (Victory Baptist or Church), is a non-profit corporation organized under the laws of the State of Ohio which operates a church and a Christian day school in Elyria, Ohio. The church school is not separately incorporated. In addition to volunteer help, Victory Baptist has persons who are regularly employed to operate the church and the church day school and who receive financial remuneration for their services.

At appellant's request, appellees conducted a rating inspection and assessed premiums pursuant to the Workers' Compensation Law for those persons who receive remuneration from the church. The Commission notified the church that it must submit the payroll report and remit the assessed premiums to the Commission. Further, the church was informed that if it did not comply with the provisions of the law, enforcement proceedings would be commenced under R. C. 4123.37 and 4123.99 (C).

Victory Baptist refused to submit to these demands on the grounds that the law interfered with the sincerely held religious beliefs of the church and its members. The appellant claims it cannot, in good conscience, contribute church monies intended solely for expenditures for religious purposes to the Workers' Compensation Fund. It asserts that to do so would be a sin. Rather, the church

proposes to accomplish the goals of the law by voluntarily caring for their ill or disabled employees.

Appellant brought this action in the court below requesting a declaratory judgment and injunctive relief from the application of the law. Each party filed a motion for summary judgment pursuant to Civ. R. 56. Based on the motions and the accompanying stipulations and affidavits, the trial court issued an order and opinion granting appellees' motion and denying that of appellant. The lower court held: (1) that the state's interest in insuring that fair compensation for an employee injured or killed in the course of his employment is a compelling interest, (2) that R. C. 4123.01 (A) and (B) include churches and their paid employees, (3) that application of the law to Victory Baptist does not violate the freedoms of religion guaranteed in the United States and Ohio Constitutions, and (4) that the provisions of the law itself are the least burdensome methods of accomplishing the compelling state purpose.

ASSIGNMENT OF ERROR 2

> "Upon consideration of the evidence in support of and in opposition to the Industrial Commission's Motion for Summary Judgment, the lower court erred in finding that Victory Baptist is an 'employer' within the meaning of the Workers' Compensation Act and that the protection of its clerical and educational 'employees' is properly governable by the Act."

Relying on the general principle of construing statutes to avoid unnecessary constitutional decisions, the

United States Supreme Court in NLRB v. Catholic Bishop of Chicago (1979), 440 U. S. 490, 501 held:

"• • •

> "The values enshrined in the First Amendment plainly rank high 'in the scale of our national values.' In keeping with the Court's prudential policy it is incumbent on us to determine whether the Board's exercise of its jurisdiction here would give rise to serious constitutional questions. If so, we must first identify 'the affirmative intention of the Congress clearly expressed' before concluding that the Act grants jurisdiction."

Thus, appellant argues unless the General Assembly expressly includes religious institutions within its definition of "employer" (R. C. 4123.01 (B)) and "employee" (R. C. 4123.01 (A)), the law must be construed to exempt churches and their ministries from coverage. We do not agree.

Congress did not specifically include church schools in its grant of jurisdiction to the National Labor Relations Board. However, this lack of an express inclusion was not dispositive of the issue before the high court. Rather, the court in Catholic Bishop of Chicago, supra, examined the language and the legislative history of the National Labor Relations Act to determine Congressional intent. In the instant case the language and legislative history admits to no other conclusion than that the General Assembly intended to include churches and their employees within the protection of the Workers' Compensation Law.

Section 35, Article II, of the Ohio Constitution states:

> "For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed estab-

lishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. * * *."

Because its purpose is remedial, the Act must be liberally construed. R. C. 1.11. See also, R. C. 4123.95.

R. C. 4123.01 (A) states in relevant part:

"As used in Chapter 4123. of the Revised Code:

"(A) 'Employee,' 'workman,' or 'operative' means:

"* * *.

"(2) Every person in the service of any person, firm, or private corporation, including any public service corporation, that (a) employs one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors, * * *.

"(B) 'Employer' means:

"* * *.

"(2) Every person, firm, and private corporation, including any public service corporation, that (a) has in service one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, * * *."

Victory Baptist admits that it is a private corporation and that persons are regularly employed to operate the church and church day school. These people are paid money by the church for performing these services. Thus, the persons receiving pay for operating the church and school fall within the plain language of the statute's definition of employees. Likewise, the church comes within the statutory definition of an employer.

The Workers' Compensation Law has been characterized by the broadest possible coverage with frequent amendments to insure that no class of employers or employees was unintentionally excluded. If the legislature had intended to exclude religious institutions, it had ample opportunity to do so. We believe that the legislature intended for employees of religious institutions to come under the protection of the Act.

ASSIGNMENT OF ERROR 4

"Upon consideration of the evidence in support of and in opposition to the Industrial Commission's Motion for Summary Judgment, the lower court erred in finding that the application of O. R. C. Chapters 4121 and 4123 of the Revised Code to Victory Baptist is not violative of the First Amendment."

Appellant's contention that the compliance abridges its right to freely exercise its religion is controlled by United States v. Lee (1982), — U. S. —, 50 Law Week 4201. In Lee, the appellee, a member of the Old Amish faith, contended that, because the payment of social security taxes violated the tenents of his religion, compulsory participation in the social security system interfered with his free exercise rights. The court agreed that the clash between appellee's religious obligation and his civic obligation was irreconcilable but said:

"• • •

"The conclusion that there is a conflict between the Amish faith and the obligations imposed by the social security system is only the beginning, however, and not the end of the inquiry. Not all burdens on religion are unconstitutional. See, e. g., Prince v. Massachusetts, 321 U. S. 158 (1944); Reynolds v. United States, 98 U. S. 145 (1879). The state may justify a

> limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest. Thomas, supra; Wisconsin v. Yoder, 406 U. S. 205 (1972); Gillette v. United States, 401 U. S. 437 (1971); Sherbert v. Verner, 374 U. S. 398 (1963)."
>
> "• • •." Id. at 4203.

Finding that the social security system serves the public interest by providing a comprehensive, nationwide insurance system with a variety of benefits available to all participants, the court held that:

> "• • • the government's interest in assuring mandatory and continuous participation in and contribution to the social security system is very high."
>
> "• • •." Id.

The court then considered whether accommodating the Amish belief would unduly interfere with the fulfillment of the governmental interest and found:

> "• • • Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax."
>
> "• • •." Id. at 4204.

Assessments pursuant to R. C. Chapter 4123 are analogous to the mandatory contributions required by the Social Security Act. In the instant case, the state has an "overriding governmental interest" in compensating workers and their dependents for death, occupational disease, and injury occurring during the course of employment. To accomplish this purpose, the state has enacted comprehensive legislation creating a system which requires support by mandatory contributions by covered employers. Widespread voluntary coverage would undermine the

soundness of the program and be difficult, if not impossible, to administer with the myriad of exceptions flowing from a wide variety of religious beliefs. The assessments imposed on employers to support the system is uniformly applicable to all, except as the General Assembly provides explicitly otherwise. Thus, we find no constitutionally required exemption for appellant from the operation of the Workers' Compensation Act.

ASSIGNMENTS OF ERROR

"1. Upon consideration of the evidence in support of and in opposition to the Industrial Commission's Motion for Summary Judgment, the lower court erred in finding that O. R. C. Chapters 4121 and 4123 apply to Victory Baptist.

• • •

"3. Upon consideration of the evidence in support of and in opposition to the Industrial Commission's Motion for Summary Judgment, the lower court erred in finding that the protections afforded to workers at Victory Baptist under the Church's Scriptural duty to aid one another in time of need due to accident or illness is 'independable (sic) and illusory.'"

In Lee, supra, the appellee demonstrated the Amish capacity to care for their own. However, despite the fact the Amish make sufficient provision for their dependent members the high court was not persuaded to exempt the appellee from paying social security assessments. In the instant case, Victory Baptist is within the coverage of the Workers' Compensation Act, even though it would aid its workers in time of illness or injury.

There being no genuine issue of material fact between the parties, the trial court properly granted appellee's motion for summary judgment pursuant to Civ. R. 56 (C).

The judgment is affirmed.

The court finds that there were reasonable grounds for this appeal.

We order that a special mandate, directing the County of Lorain Common Pleas Court to carry this judgment into execution, shall issue out of this court. A certified copy of this journal entry shall constitute the mandate, pursuant to App. R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App. R. 22 (E).

Costs taxed to appellant.

Exceptions.

/s/ Edward I. Mahoney
Presiding Judge for the Court

MAHONEY, P. J.
BELL, J.
CONCUR

APPEARANCES:

CHARLES E. CRAZE, Attorney at Law, 6929 W. 130th St., Suite 600, Cleveland, OH 44130 for Plaintiff.

WILLIAM J. BROWN, Attorney General, State Office Tower, 30 E. Broad St., Columbus, OH 43215 for Defendants.

APPENDIX C

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

Case No. 84897-79

VICTORY BAPTIST TEMPLE, INC.,

Plaintiff,

vs.

INDUSTRIAL COMMISSION OF OHIO, et al.,

Defendants.

OPINION

This case is before the Court on Stipulations of Fact and Cross Motions for Summary Judgment by plaintiff, Victory Baptist Temple, Inc., and defendants, Industrial Commission of Ohio and its Administrator.

In keeping with the tenor of the briefs, it has to be observed that this Opinion is being written by one of Caesar's employees.

Plaintiff alleges the Worker's Compensation Law is inapplicable to it because of a lack of "clear legislative intent" to place clerical and educational employees in the same benefit status as "industrial" employees. The Court, however, must recognize that employees, regardless of their functions, are subject to disabling injuries in their employment and that any differentiation between clerical or educational employees and industrial employees is (sic) unwarranted in view of the wording and intent of the Act to protect "workers and their dependents".

While plaintiff could, to some degree, limit its involvement with the State by becoming "self-insured" under the

Act, it has not done so. Rather, it argues its members have a "scriptural duty and privilege to help one another in time of need so that none of our people will be without food, clothing, shelter or other essentials due to accident or illness. Romans 12:13" and that allowing the members to voluntarily carry out the duty is the least burdensome method of protecting the health and safety of its workers. While such behavior is admirable and to be encouraged, it is so voluntary that if allowed to be the sole method of protection, it could become so independable and illusory as to comprise no protection whatsoever. Such a possibility is precisely one of the reasons the Act was developed and it has repeatedly been declared to be a constitutional, reasonable and valid exercise of legislative power to protect the public health, welfare and safety. *State v. Creamer*, 85 O. St. 349. The Court finds plaintiff is an "employer" within the meaning of the Act and that the protection of its clerical and educational "employees" is properly governable by the Act.

The plaintiff further argues that application of the Act to it is unconstitutional in that it would or could result in excessive "entanglement" between the State and plaintiff as a religious organization. The Court finds this argument also without merit. The Act does not advance or inhibit religion and insures only that an employee injured in the course of employment is fairly and equitably compensated. As has been previously found, the State does have a compelling interest in so protecting employees. History, since the enactment of the Act in 1912, does not reflect that interference, intrusion or control of religious organizations has resulted from participation in

the Act's requirements and benefits. Indeed, plaintiff's own participation did not reflect such intrusions.

In summary, the arguments of plaintiff, though learned and eloquent, are not persuasive. The Court finds O. R. C. Chapters 4121 and 4123 do apply to plaintiff and its clerical and educational employees. The Court further finds such application is not violative of the First Amendment. Accordingly, plaintiff's Motion for Summary Judgment is denied while defendant's Motion is granted. Costs to plaintiff.

/s/ Adrian F. Betleski, Judge

copies to:

Charles E. Craze, 6929 W. 130th St., Suite 600, Cleveland, OH 44130

Bernard C. Fox, Jr., Asst. AG, State Office Tower, 30 E. Broad St., Columbus 43215

APPENDIX D

COURT OF COMMON PLEAS
Lorain County, Ohio
Natalie B. Neeson, Clerk

Case No. 84897

VICTORY BAPTIST TEMPLE, INC.,

Plaintiff,

vs.

INDUSTRIAL COMM. OF OHIO, et al.,

Defendant.

10/2/81

The Court has reviewed the Stipulations of Fact and Cross Motions for Summary Judgment and finds that Chapters 4121 and 4123 O. R. C. do apply and are not violative of the First Amendment. Accordingly, Plaintiff's Motion for Summary Judgment is denied and defendant's Motion is granted. Costs to plaintiff. See Opinion.

/s/ Adrian F. Betleski, Judge

APPENDIX E

Abundant Life Baptist Church
Box 302
West Carrollton, Ohio 45449

Apostolic Gospel Church
1778 Grange Hall
Dayton, Ohio 45432

Apostolic Lighthouse Church
2221 Harshman Road
Dayton, Ohio 45424

Bantam Wesleyan Holiness Church
2295 Hillcrest
Amelia, Ohio 45102

Baptist Bible Church
6719 State Rt. 225
Ravenna, Ohio 44266

Belfast Baptist Church
6009 Belfast Road
Goshen, Ohio 45122

Berean Baptist Church
4058 Starr Avenue
Oregon, Ohio 43616

Bethel Baptist Church
745 N. Freedom Street
Ravenna, Ohio 44266

Bethesda Apostolic Church
209 S. King Road
Holland, Ohio 43528

Bible Baptist Temple
P. O. Box 32005
Euclid, Ohio 44132

Bible Believers Baptist Church
5360 East Center Drive, N. E.
North Canton, Ohio 44721

Calvary Baptist Church
748 S. Gebhart Church Road
Miamisburg, Ohio 45342

Calvary Baptist Church
1123 State Rte. 28
Milford, Ohio 45150

Calvary Baptist Church
21 Washington Street
Shelby, Ohio 44875

Calvary Pentecostal Church
353 W. Kemper Road
Cincinnati, Ohio 45246

Canton Road Baptist Church
1398 Canton Road
Akron, Ohio 44312

Centerville Christian Assembly
175 East Franklin Street
Centerville, Ohio 45459

Christ Gospel Church
250 Home Avenue
Mansfield, Ohio 44903

Christian Assembly
P. O. Box 268
Fremont, Ohio 43420

Church Of God
3770 St. Lawrence Avenue
Cincinnati, Ohio 45205

Church of God
97 E. Main Street
Clarksville, Ohio 45113

Church of God
2701 Jefferson Road
Jefferson, Ohio 44047

Church of God
1332 E. Main Street
Lancaster, Ohio 43130

Church of God
283 Sections Street
LaRue, Ohio 43332

Church of God
7599 S. Center
Mentor, Ohio 44060

Church of God
3595 Edison Avenue
Uniontown, Ohio 44685

Church of God
244 W. South Street
Wooster, Ohio 44691

Cleveland Baptist Church
4431 Tiedeman Road
Cleveland, Ohio 44144

Clyde Missionary Baptist
441 Duane Street
Clyde, Ohio 43410

Columbia Rd. Baptist Church
4116 Columbia Road
N. Olmsted, Ohio 44070

Cozddale Baptist Temple
10632 Eltzroth Road
Goshen, Ohio 45122

Decatur Chapel Church
Rt. 1, Box 155
Little Hocking, Ohio 45742

Eaton Baptist Temple
416 East Decatur Street
Eaton, Ohio 45320

Emmanuel Baptist Temple
329 North Carpenter
Brunswick, Ohio 44212

Euclid Avenue Mission
603 Euclid Avenue
Marion, Ohio 43302

Faith Assembly of God
1213 Leeson Avenue
Van Wert, Ohio 45891

Faith Baptist Church
Defiance
Ohio, 43512 IN

Faith Baptist Church
P. O. Box 648
Williamsburg, Ohio 45176

Faith Baptist Temple
34361 Lorain Road
N. Ridgeville, Ohio 44039

Faith Presbyterian
2540 South Main Street
Akron, Ohio 44319

Fayette Wesleyan Missionary Church
Fayette
Ohio, 43521 IN

Fellowship Baptist Church
Beloit
Ohio, 44609 IN

First Baptist Church
500 Beach Drive
Belpre, Ohio 45714

First Baptist Church
1308 N. Maple Street
Eaton, Ohio 45320

First Baptist Church
745 Center Road
Milford, Ohio 45150

First Pentecostal Church
282 Stelton Road
Xenia, Ohio 45385

Franklin Baptist Church
160 Deardoff Road
Franklin, Ohio 45005

Fremont Baptist Temple
1150 S. CR#198
Fremont, Ohio 43420

Fundamental Baptist Church
2219 Allen-Comp Road
Dorset, Ohio 44032

God's Tabernacle
9254 U. S. 36
Bradford, Ohio 45308

Gospel Baptist Church
6477 Cooper Road
Cincinnati, Ohio 45242

Greenfield Bible Baptist Church
St. Rt. 28 W.
Greenfield, Ohio 45123

Greenville Baptist Temple
203 Warren Street
Greenville, Ohio 45331

Hamilton Church of God
1760 Millville Avenue
Hamilton, Ohio 45011

Harmony Baptist Church
1196 Inman Street
Akron, Ohio 44306

Harvest Temple
144 Lemon Street
Clyde, Ohio 43410

Huber Hts. Baptist Temple
7730 Taylorsville Road
Huber Hts., Ohio 45424

Independent Baptist Church
3583 S.R. #59
Ravenna, Ohio 44266

Liberty Baptist Church
1017 Lake Avenue
Elyria, Ohio 44035

Liberty Baptist Temple
5470 Spfld.-Jamestown Road
Springfield, Ohio 45502

Mansfield Baptist Temple
P. O. Box 2001
Mansfield, Ohio 44095

Maranatha Baptist Church
815 Co. Road 30A
Hayesville, Ohio 44838

Maranatha Baptist Church
77 Saxe Road
Mogadore, Ohio 44260

Montpelier Baptist Church
Brown Road
Montpelier, Ohio 43543

Mt. Hope Baptist Church
P. O. Box 222
Harrison, Ohio 45030

New Carlisle Church of God
595 N. Medway New Carlisle Road
New Carlisle, Ohio 45344

New Covenant Church
4161 Maize Road
Columbus, Ohio 43224

New Life Temple
5922 Prentice Street
Cincinnati, Ohio 45227

Newark Baptist Temple
81 Licking View Drive
Heath, Ohio 43055

Norwalk Baptist Church
99 E. Maine Street
Norwalk, Ohio 44857

Ohio Valley Christian Center
R.D. 1
Steubenville, Ohio 43952

Open Door Baptist Church
301 Franklin Street
Marietta, Ohio 45750

Peoples Baptist Church
3840 Center Road
Brunswick, Ohio 44212

Philadelphia Church of God
2900 Philadelphia Drive
Dayton, Ohio 45405

Pilgrim Holiness Church
N. Main Street
Nevada, Ohio 44849

Prairie Chapel Bible Church
Rt. #2 Co. Rd. 209
Oakwood, Ohio 45873

President Drive Church
of Christ
3671 President Drive
Cincinnati, Ohio 45225

Sharonville Church of God
10830 Sharondale Road
Cincinnati, Ohio 45241

Solon Baptist Temple
7669 SOM Center Road
Solon, Ohio 44139

South Ridge Baptist Church
924 Center Road
Conneaut, Ohio 44030

Sunshine Baptist Church
3649 Bloomfield Road
Cambridge, Ohio 43725

Temple Baptist Church
1420 S. Abbe Road
Elyria, Ohio 44035

Temple Baptist Church
11965 Kenn Road
Springdale, Ohio

The Bible Speaks
3355 Ambert Street
Youngstown, Ohio 44502

Toledo Baptist Church
5732 Douglas Road
Toledo, Ohio 43613

Tree City Baptist Church
4167 State Rte. 43
Brimfield, Ohio 44240

Trimble Road Bible Church
939 W. Cook Road
Mansfield, Ohio 44906

Trinity Baptist Church
7839 CR 236
Findlay, Ohio 45840

Trinity Full Gospel Church
535 Munson Avenue
Zanesville, Ohio 43701

United Apostolic Church
2590 Morse Road
Columbus, Ohio 43229

United Bethel Mennonite
Church
809 Lombard Road
Plain City, Ohio 43064

United Pentecostal Church
200 Snyder Street
Springfield, Ohio 45504

Valley Bible Center
P.O. Box T
Coolville, Ohio 45723

Wesleyan Evangelistic Church
2104 Revere Avenue
Dayton, Ohio 45420

West Broad Missionary Chapel
1245 W. Broad Street
Columbus, Ohio 43222

Westside Church of God
Hamilton
Ohio, 45013 IN

Westwood Baptist
3906 W. Alexis
Toledo, Ohio 43623

Whetstone Baptist Church
994 Poe Road
Bucyrus, Ohio 44820

Wilmington Church of God
198 South Walnut
Wilmington, Ohio 45177

Youngstown Baptist Church
554 South Meridian
Youngstown, Ohio 44509

APPENDIX F

I § 7 Rights of conscience; the necessity of religion and knowledge.

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

II § 35 Workmen's compensation

Note: 1976 S 545, eff. 1-17-77, changed "Workmen's compensation" to "Workers' compensation".

For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made

therefrom. Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all rights of claimants thereto. Such board shall set aside as a separate fund such proportion of the contributions paid by employers as in its judgment may be necessary, not to exceed one per centum thereof in any year, and so as to equalize, insofar as possible, the burden thereof, to be expended by such board in such manner as may be provided by law for the investigation and prevention of industrial accidents and diseases. Such board shall have full power and authority to hear and determine whether or not an injury, disease of death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of employees, enacted by the general assembly, or in the form of an order adopted by such board, and its decision shall be final; and for the purpose of such investigations and inquiries it may appoint referees. When it is found, upon hearing, that an injury, disease or death resulted because of such failure by the employer, such amount as shall be found to be just, not greater than fifty nor less than fifteen per centum of the maximum award established by law, shall be added by

the board, to the amount of the compensation that may be awarded on account of such injury, disease, or death, and paid in like manner as other awards; and, if such compensation is paid from the state fund, the premium of such employer shall be increased in such amount, covering such period of time as may be fixed, as will recoup the state fund in the amount of such additional award, notwithstanding any and all other provisions in this constitution.

4123.01 Definitions

As used in Chapter 4123 of the Revised Code:

(A) "Employee," "workman," or "operative" means:

(1) Every person in the service of the state, or of any county, municipal corporation, township, or school district therein, including regular members of lawfully constituted police and fire departments of municipal corporations and townships, whether paid or volunteer, and wherever serving within the state or on temporary assignment outside thereof, and executive officers of boards of education, under any appointment or contract of hire, express or implies oral or written, including any elected official of the state, or of any county, municipal corporation, or township, or members of boards of education.

(2) Every person in the service of any person, firm, or private corporation, including any public service corporation, that (a) employs one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors, household workers who earn one hundred sixty dollars or

more in cash in any calendar quarter from a single household and casual workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single employer, but not including any officer of a family farm corporation, or (b) is bound by any such contract of hire or by any other written contract, to pay into the state insurance fund the premiums provided by Chapter 4123. of the Revised Code.

Every person in the service of any independent contractor or subcontractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the industrial commission for his employment or occupation or to elect to pay compensation directly to his injured and to the dependents of his killed employees, as provided in section 4123.35 of the Revised Code, shall be considered as the employee of the person who has entered into a contract, whether written or verbal, with such independent contractor unless such employees or their legal representatives or beneficiaries elect, after injury or death, to regard such independent contractor as the employer.

(3) If an employer is a partnership, sole proprietorship, or family farm corporation, such employer may elect to include as an "employee" within this chapter, any member of such partnership, the owner of the sole proprietorship, or the officers of the family farm corporation. In the event of such election, the employer shall serve upon the commission written notice naming the persons to be covered, include such employee's remuneration for premium purposes in all future payroll reports, and no such

proprietor, or partner shall be deemed an employee within this division until such notice has been served.

(B) "Employer" means:

(1) The state, including state hospitals, each county, municipal corporation, township, school district, and hospital owned by a political subdivision or subdivisions other than the state,

(2) Every person, firm and private corporation, including any public service corporation, that (a) has in service one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, or (b) is bound by any such contract of hire or by any other written contract, to pay into the insurance fund the premiums provided by Chapter 4123. of the Revised Code.

All such employers are subject to Chapter 4123. of the Revised Code. Any member of a firm or association, who regularly performs manual labor in or about a mine, factory, or other establishment, including a household establishment, shall be considered a workman or operative in determining whether such person, firm, or private corporation, or public service corporation, has in its service, one or more workmen and the income derived from such labor shall be reported to the industrial commission as part of the payroll of such employer, and such member shall thereupon be entitled to all the benefits of an employee.

4123.12 Attachment proceeding to compel obedience

In case any person fails to comply with an order of the industrial commission or subpoena issued by the commission, its secretary, or director of claims, or any of its inspectors, examiners, or claims referees, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or if any person refuses to permit an inspection, the probate judge of the county in which the person resides, on application of any member of the commission, its secretary, or director of claims, or any inspector, examiner, or claims referee appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoena issued from such court on a refusal to testify therein.

4123.23 Inspection of books, records, and payrolls

All books, records, and payrolls of the employers of the state, showing or reflecting in any way upon the amount of wage expenditure of such employers, shall always be open for inspection by the industrial commission, or any of its traveling auditors, inspectors, or assistants, for the purpose of ascertaining the correctness of the wage expenditure, the number of men employed, and such other information as is necessary for the uses and purposes of the commission in its administration of the law.

Refusal on the part of any employer to submit his books, records, and payrolls for the inspection of any member of the commission or traveling auditor, inspector, or assistant presenting written authority from the commission shall subject such employer to a forfeiture of one hundred dollars for each such offense, to be collected

by civil action in the name of the state, and paid into the state insurance fund.

4123.26 Annual statement by employer; forfeiture

Every employer shall keep records of, and furnish to the industrial commission upon request, all information required by the commission to carry out Chapter 4123. of the Revised Code. In January of each year, every employer of the state employing one or more employees regularly in the same business, or in or about the same establishment, shall prepare and mail to the commission at its main office in Columbus a statement containing the following information:

(A) The number of employees employed during the preceding year from the first day of January through the thirty-first day of December;

(B) The number of such employees employed at each kind of employment and the aggregate amount of wages paid to such employees.

Such information shall be furnished on a blank to be prepared by the commission. The commission shall furnish such blanks to employers free of charge upon request therefor. Every employer receiving from the commission any blank, with directions to fill out the same, shall cause the same to be properly filled out so as to answer fully and correctly all questions therein propounded, and give all the information therein sought, or if unable to do so, he shall give to the commission in writing good and sufficient reasons for such failure. The commission may require that the information required to be furnished be verified under oath and returned to the commission with-

in the period fixed by it or by law. The commission or any member thereof, or any person employed by the commission for that purpose, may examine, under oath, any employer, or the officer, agent, or employee thereof, for the purpose of ascertaining any information which such employer is required to furnish to the commission.

No employer shall fail to furnish to the commission the annual statement required by this section, nor shall any employer fail to keep records of or furnish such other information as may be required by the commission under this section.

Whoever violates this section shall forfeit five hundred dollars, to be collected in a civil action brought against said employer in the name of the state, to be paid into the state insurance fund and become a part thereof.

4123.35 Payments to insurance fund; self-insurers

Except as provided in this section, every employer mentioned in division (B) (2) of section 4123.01 of the Revised Code, and every publicly owned utility shall semiannually in the months of January and July pay into the state insurance fund the amount of premium fixed by the industrial commission for the employment or occupation of such employer, the amount of which premium to be so paid by each such employer to be determined by the classifications, rules, and rates made and published by said commission. Such employer shall semiannually pay such further sum of money into the state insurance fund as may be ascertained to be due from him by applying the rules of said commission, and a receipt or certificate certifying that such payment has been made shall immediately be

mailed to such employer by the commission, which receipt or certificate, attested by the seal of said commission, is prima-facie evidence of the payment of such premium.

The bureau of workers' compensation shall verify with the secretary of state the existence of all corporations and organizations making application on or after the effective date of this section for workers' compensation coverage and shall require every such application to include the employer's federal identification number.

An employer as defined in division (B) (2) of section 4123.01 of the Revised Code who has contracted with a subcontractor shall be liable for the unpaid premium due from any such subcontractor with respect to that part of the payroll of the subcontractor which is for work performed pursuant to the contract with such employer.

Provided, that as to all employers who were subscribers to the state insurance fund prior to January 1, 1914, or who may first become subscribers to said fund in any other month than January or July, the first paragraph of this section providing for the payment of such premiums semiannually do not apply, but such semiannual premiums shall be paid by such employers from time to time upon the expiration of the respective periods for which payments into the fund have been made by them. Provided, that such employers and publicly owned utilities who will abide by the rules of the commission and who may be of sufficient financial ability to render certain the payment of compensation to injured employees or the dependents of killed employees, and the furnishing of medical, surgical, nursing, and hospital attention and services and medicines, and funeral expenses, equal to or greater than is

provided for in sections 4123.52, 4123.55 to 4123.62 and 4123.64 to 4123.67 of the Revised Code, and who do not desire to insure the payment thereof or indemnify themselves against loss sustained by the direct payment thereof, may, upon a finding of such facts by the commission, be granted the privilege to pay individually such compensation, and furnish such medical, surgical, nursing, and hospital services and attention and funeral expenses directly to such injured employees or the dependents of such killed employees. The commission may require such security or bond from said employers and publicly owned utilities as it deems proper, adequate, and sufficient to compel, or secure to such injured employees, or to the dependents of such employees as may be killed, the payment of such compensation and expenses, which shall in no event be less than that paid or furnished out of the state insurance fund in similar cases to injured employees or to dependents of killed employees whose employers contribute to said fund, except when an employee of such employer, who has suffered the loss of a hand, arm, foot, leg, or eye prior to the injury for which compensation is to be paid, and thereafter suffers the loss of any other of said members as the result of any injury sustained in the course of and arising out of his employment, the compensation to be paid by such employer and publicly owned utility shall be limited to the disability suffered in the subsequent injury, additional compensation, if any, to be paid by the commission out of the surplus created by section 4123.34 of the Revised Code. Should municipal or other bonds be accepted by said commission as security for said payments, such bonds shall be deposited with the treasurer of state who shall have custody thereof and re-

tain the same in his possession according to the conditions prescribed by the order of said commission accepting the same as security, and the treasurer of state shall retain possession of said bonds until such time as he is directed by said commission as to the manner of his disposition of the same. The commission shall make and publish rules governing the manner of making application and the nature and extent of the proof required to justify such finding of fact by said commission as to granting the privilege to such employers and publicly owned utilities, which rules shall be general in their application, one of which rules shall provide that all employers, including publicly owned utilities, granted the privilege to compensate directly their injured employees and the dependents of their killed employees, shall pay into the state insurance fund such amounts as are required to be credited to the surplus in division (B) of section 4123.34 of the Revised Code. The commission also shall adopt rules: establishing a minimum level of performance as a criterion for granting the privilege to pay compensation directly; fixing time limits beyond which failure of the self-insuring employer to provide for the necessary medical examinations and evaluations may not delay a decision on a claim; establishing the grounds upon which the commission will hold a public hearing to evaluate the program for self-insuring employers and set forth the procedures for revocation of self-insurer status which shall include continued failure to file medical reports bearing upon the injury of the claimant and failure to pay compensation or benefits in accordance with law in a timely manner. The commission may change or modify its findings of fact, or revoke the privilege of such employer or publicly owned utility to pay

compensation direct, if in its judgment such action is necessary or desirable to secure or assure a strict compliance with all the provisions of Chapter 4123. of the Revised Code, referring to the payment of compensation and the furnishing of medical, nurse, and hospital services and medicines and funeral expenses to injured employees and the dependents of killed employees.

The commission shall adopt rules setting forth procedures for auditing the program of employers that are granted the privilege to pay compensation directly. Audits shall be conducted by the bureau of workers' compensation upon a random basis or whenever the bureau has grounds for believing that an employer is not in full compliance with commission rules or Chapter 4123. of the Revised Code. The bureau shall report its findings to the commission.

The administrator of the bureau of workers' compensation shall monitor the programs conducted by self-insuring employers, to ensure compliance with commission requirements and for that purpose, shall develop and issue to employers who pay compensation directly standardized forms for use by the employer in all aspects of the employers' direct compensation program and for reporting of information to the bureau.

The bureau shall receive and transmit to the commission and to the employer all complaints concerning any employer engaged in paying compensation directly to employees. The commission shall maintain a file by employer of all complaints received that relate to the employer. The commission shall evaluate each complaint and take appropriate action.

The commission shall adopt as a rule a prohibition against any employer who is granted the privilege to pay compensation directly from harassing, dismissing, or otherwise disciplining any employee making a complaint which rule shall provide for a financial penalty to be levied by the commission payable by the offending employer.

4123.37 Amenable employer; assessment; hearing

In this section "amenable employer" means an employer subject to division (B) (2) of section 4123.01 of the Revised Code.

If the industrial commission finds that any person, firm, or private corporation, including any public service corporation is, or has been at any time after January 1, 1923, an amenable employer and has not complied with section 4123.35 of the Revised Code the industrial commission shall determine the period during which such person, firm, or corporation was an amenable employer and shall forthwith give notice of such determination to the employer. Within twenty days thereafter the employer shall furnish the industrial commission with the payroll covering the period included in the determination and, if the employer is an amenable employer at the time of the determination, shall pay a premium security deposit for the eight months next succeeding the date of the determination and shall pay into the state insurance fund the amount of premium applicable to such payroll.

If the employer does not furnish the payroll and pay the applicable premium and premium security deposit within the said twenty days, the industrial commission shall forthwith make an assessment of the premium due

from the employer for the period the industrial commission determined the employer to be an amenable employer including the premium security deposit according to section 4123.32 of the Revised Code if the employer is an amenable employer at the time of the determination, basing the assessment upon such information as may be in the possession of the industrial commission.

The industrial commission shall give to the employer assessed written notice of such assessment. Such notice shall be mailed to the employer at his residence or usual place of business by certified mail. Unless the employer to whom said notice of assessment is directed files with the industrial commission within twenty days after receipt thereof, a petition in writing, verified under oath by said employer, or his authorized agent having knowledge of the facts, setting forth with particularity the items of said assessment objected to, together with the reason for such objections, such assessment shall become conclusive and the amount thereof shall be due and payable from the employer so assessed to the state insurance fund. When a petition objecting to an assessment is filed the industrial commission shall assign a time and place for the hearing of the same and shall notify the petitioner thereof by certified mail. When an employer files such a petition the assessment made by the industrial commission shall become due and payable ten days after notice of the finding made at the hearing has been sent by certified mail to the party assessed. An appeal may be taken from any such finding to the court of common pleas of Franklin county upon the execution by the party assessed of a bond to the state in double the amount so found due and ordered paid by the industrial commission conditioned that the said

party will pay any judgment and costs rendered against it for said premium.

When no petition objecting to an assessment is filed or when a finding is made affirming or modifying such an assessment after a hearing, a certified copy of the assessment as affirmed or modified may be filed by the industrial commission in the office of the clerk of the court of common pleas in any county in which the employer has property or in which the employer has a place of business. The clerk, immediately upon the filing of such assessment, shall enter a judgment for the state against the employer in the amount shown on the assessment. The judgment may be filed by the clerk in a loose leaf book entitled "special judgments for state insurance fund." Such judgment shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by law on other judgments rendered for claims for taxes. An assessment or judgment under this section shall not be a bar to the adjustment of the employer's account upon the employer furnishing his payroll records to the industrial commission.

The industrial commission, for good cause shown, may waive a default in the payment of premium where such default is of less than sixty days' duration, and upon payment by the employer of the premium for such period, he and his employees are entitled to all of the benefits and immunities provided by Chapter 4123. of the Revised Code.

4123.54 Compensation in case of injury, disease or death; agreement if work performed in another state; employers temporarily in Ohio

Every employee, who is injured or who contracts an occupational disease, and the dependents of each employee who is killed, or dies as the result of an occupational disease contracted in the course of employment, wherever such injury has occurred or occupational disease has been contracted, provided the same were not purposely self-inflicted, is entitled to receive, either directly from his employer as provided in section 4123.35 of the Revised Code, or from the state insurance fund, such compensation for loss sustained on account of such injury, occupational disease or death, and such medical, nurse, and hospital services and medicines, and such amount of funeral expenses in case of death, as are provided by sections 4123.01 to 4123.94 of the Revised Code.

Whenever, with respect to an employee of an employer who is subject to and has complied with sections 4123.01 to 4123.94 of the Revised Code, there is possibility of conflict with respect to the application of workers' compensation laws because the contract of employment is entered into and all or some portion of the work is or is to be performed in a state or states other than Ohio, the employer and the employee may agree to be bound by the laws of this state or by the laws of some other state in which all or some portion of the work of the employee is to be performed. Such agreement shall be in writing and shall be filed with the industrial commission within ten days after it is executed and shall remain in force until terminated or modified by agreement of the parties similarly filed. If the agreement is to be bound by the laws of this state and the employer has complied with sections 4123.01 to 4123.94 of the Revised Code, then the employee is entitled to compensation and benefits regardless of

where the injury occurs or the disease is contracted and the rights of the employee and his dependents under the laws of this state shall be the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of his employment. If the agreement is to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and his dependents under the laws of that state shall be the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of his employment without regard to the place where the injury was sustained or the disease contracted.

If any employee or his dependents are awarded workers' compensation benefits or recover damages from the employer under the laws of another state, the amount so awarded or recovered, whether paid or to be paid in future installments, shall be credited on the amount of any award of compensation or benefits made to the employer or his dependents by the industrial commission.

If an employee is a resident of a state other than this state and is insured under the workers' compensation law or similar laws of a state other than this state, such employee and his dependents are not entitled to receive compensation or benefits under sections 4123.01 to 4123.94 of the Revised Code, on account of injury, disease, or death arising out of or in the course of employment while temporarily within this state and the rights of such employee and his dependents under the laws of such other state shall be the exclusive remedy against the employer on account of such injury, disease, or death.

4123.99 Penalties

(A) Whoever violates section 4123.27 of the Revised Code is guilty of a misdemeanor of the fourth degree.

(B) Whoever violates section 4123.28 of the Revised Code is guilty of a misdemeanor of the fourth degree.

(C) Whoever violates section 4123.50 of the Revised Code is guilty of a minor misdemeanor. Whoever purposely violates such section is guilty of a misdemeanor of the second degree.

(D) Whoever violates section 4123.81 of the Revised Code is guilty of a minor misdemeanor.

(E) Whoever violates section 4123.88 of the Revised Code is guilty of a misdemeanor of the second degree.

(F) Whoever violates section 4123.417 of the Revised Code is guilty of a misdemeanor of the second degree, and the persons who shall have paid a fee, compensation, or gratuity as prohibited by section 4123.417 of the Revised Code may recover by civil action three times the amount thereof, together with a reasonable attorney fee, from the person to whom said sum was paid or given.

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FILED
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ALEXANDER L. STEVAS,
CLERK

CASE NO. 82-549

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

VICTORY BAPTIST TEMPLE, INC.,
Petitioner,

v.

INDUSTRIAL COMMISSION OF OHIO and
OHIO BUREAU OF WORKERS' COMPENSATION
Respondents.

BRIEF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI

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SUMMARY OF ARGUMENT

The Courts below did not err in granting judgment based upon the written stipulations of fact filed in the case. Likewise, no error was committed in finding that the First Amendment to the United States Constitution was not violated by applying Ohio's Workers' Compensation Law to Petitioner's paid employees.

STATEMENT OF THE CASE

This case originated in the Court of Common Pleas, Lorain County, Ohio as a Declaratory Judgment action, seeking relief from the application of the Ohio Workers' Compensation laws to the Petitioner, Victory Baptist Temple, Inc.

The Court of Common Pleas, based upon the Complaint, the Answer, Stipulated Facts filed in the case, and various Affidavits, granted the motion of the Industrial Commission for Summary Judgment and overruled a similar motion by Victory Baptist Temple, Inc. Victory Baptist Temple, Inc., then appealed to the Court of Appeals, Ninth Appellate District of Ohio. The case was briefed and argued on January 28, 1982, and by decision dated March 24, 1982, the Court of Appeals affirmed the decision of the Court of Common Pleas.

Victory Baptist Temple, Inc., an Ohio corporation, then filed a memorandum in support of jurisdiction in the Supreme Court of Ohio. A memorandum in opposition was filed on behalf of the Industrial Commission of Ohio and the Court overruled the motion. Victory Baptist Temple, Inc. now petitions this Honorable Court for a Writ of Certiorari.

STATEMENT OF THE FACTS

After nearly three-quarters (3/4) of a century of Workers' Compensation in the State of Ohio, and virtually every other state in the Union, Victory Baptist Temple, Inc. now brings this action alleging that such a system violates its First Amendment rights. All material facts in the case at bar were stipulated by parties are not in dispute.

The material, stipulated facts in this case are that the Petitioner, Victory Baptist Temple, Inc., is a corporation organized under the laws of the State of Ohio. It was further stipulated that the Petitioner, Victory Baptist Temple, Inc., "regularly employs persons" who operate, its church and school for "financial remuneration."

At Petitioner's request, the Industrial Commission of Ohio conducted a rating inspection. Petitioner had been paying premiums to the Industrial Commission prior to this inspection. Premiums were assessed, pursuant to the Ohio Workers' Compensation laws, for those persons who receive salaries from the church. Victory Baptist Temple, Inc., then refused to pay the premiums on the grounds that the law interfered with its "sincerely held" religious beliefs in that it could not in good conscience "render church monies unto Caesar." It made this refusal after years of contribution to the State Insurance Fund.

In the alternative, Victory Baptist Temple, Inc., proposed to accomplish the goals of the Workers' Compensation laws by "voluntarily" caring for their ill or disabled employees. In the Court of Common Pleas, Victory Baptist Temple, Inc., first contended that it was its "sincerely held" religious belief that it could not "render unto Caesar" money for taxes. Secondly, Victory Baptist

Temple, Inc., contended that the application of the Workers' Compensation laws to the church would cause an "unnecessary interference" in its religious affairs. The Trial Judge granted Summary Judgment against the Petitioner based upon stipulated facts and found that the Ohio Workers' Compensation laws do cover the paid employees of the church and that Victory Baptist Temple, Inc., must contribute based upon these salaries.

In the Court of Appeals, Victory Baptist Temple, Inc., proceeded only on the theory that the Ohio Workers' Compensation system would "unnecessarily interfere" with church affairs. The Court of Appeals in a well reasoned decision found that such was not the case.

On March 24, 1982, the Ohio Supreme Court overruled Petitioners' Motion in Support of Jurisdiction. Victory Baptist Temple, Inc. now petitions this Honorable Court for a Writ of Certiorari.

REASONS FOR DENYING THE WRIT.

1. **THE COURTS BELOW DID NOT ERR IN FINDING THAT THERE WAS NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND THAT REASONABLE MINDS COULD COME TO BUT ONE CONCLUSION AND THAT THAT CONCLUSION WAS ADVERSE TO VICTORY BAPTIST TEMPLE, INC., AND THAT THE INDUSTRIAL COMMISSION OF OHIO WAS ENTITLED TO JUDGMENT AS A MATTER OF LAW.**

As previously noted in the Statement of Facts, the parties in the case *sub judice* entered into a written stipulation of fact which was timely filed in the case. The Petitioner, Victory Baptist Temple, Inc., cannot controvert these facts on appeal.

The first step which both the Trial Court and Court of Appeals took was to ascertain whether or not the Petitioner, Victory Baptist Temple, Inc., was covered by the provisions of the Ohio Workers' Compensation law. As the Court of Appeals noted at Page 5 of its decision:

> "R.C. 4123.01(A) states in relevant part:
>
> > 'as used in Chapter 4123 of the Revised Code: A. Employee, workman, or operative means:***
> >
> > 2. Every person in the service of any person, firm or private corporation, including any public service corporation that (a) employs one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, expressed or implied, oral or written, including aliens and minors***

> B. Employer means:***
>
> 2. Every person, firm, and private corporation, including any public service corporation that (a) has in service one (1) or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, expressed or implied, oral or written***"

Victory Baptist admits that it is a private corporation and that persons are regularly employed to operate the church and church day school. These people are paid money by the church for performing these services. Thus the persons receiving pay for operating the church and school fall within the plain language of the statute's definition of employees. Likewise, the church comes within the statutory definition of an employer."

(Appendix A, App. 5)

Thus, there was no material issue of fact to be decided at a trial. As was previously noted in the Statement of the Case, the case was submitted to the Trial Court on stipulated facts and cross-motions for summary judgment. Thus, Petitioners complaint of not receiving an evidentiary hearing is groundless. Had Petitioner wished to present more "evidence", it should have done so in the more than two years in which the case was pending in the Trial Court and not waited until this time to so complain. Furthermore, it must be noted that Appendix E to Petitioners Brief, which

purports to be a list of churches, was *not* presented to either the Trial Court of the Court of Appeals, below. It is now totally inappropriate to append such a list in this Court.

2. APPLICATION OF OHIO REVISED CODE CHAPTERS 4121 AND 4123 TO VICTORY BAPTIST TEMPLE IS NOT VIOLATIVE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION.

Petitioner complains that to require it to contribute to the State Insurance Fund is a violation of its rights under the First Amendment of the United States Constitution. Obviously, the First Amendment guarantees were not meant to prohibit the State from imposing *any* of its laws upon a church organization. In point of fact, churches are not immune from civil liability at common law in Ohio. Therefore, were it not for Ohio Workers' Compensation laws, Victory Baptist Temple, Inc., could be sued in a civil action in the Courts of Ohio by its injured employees.

The Ohio General Assembly has, however, replaced common law actions against an employer by an employee for injuries received in the "course of employment" by the Workers' Compensation system. It is inconceivable that Victory Baptist Temple, Inc., can be heard to complain of the system which absolves it of civil liability and replaces that liability with a schedule of benefits. There is no excessive governmental entanglement involved in the payment of a premium based upon Petitioner's payroll to its regular salaried employees.

Moreover, the issue involved in the case at bar was decided just last term by this Court in *United States v. Lee* _____ U.S. _____, 102 S.Ct. 105, 71 L.Ed. 2d 127 (1982). As the Ninth District Court of Appeals of Ohio noted in its opinion at page 7:

> "Appellant's contention that the compliance abridges its right to freely exercise its religion is controlled by *United States v. Lee* (1982), 50 *Law Week* 4201. In *Lee*, the appellee, a member of the old Amish faith, contended that because the payment of Social Security taxes violated the tenets of his religion, compulsory participation in the Social Security system interfered with his free exercise rights. The Court agreed that the clash between apellee's religious obligation and his civic obligation was irreconcilable, but said:***
>
> > "The conclusion that there is a conflict between the Amish faith and the obligations imposed by the Social Security system is only the beginning, however, and not the end of the inquiry. Not all burdens on religion are unconstitutional. (See e.g., *Prince v. Massachusetts*, 321 U.S. 158 (1941), *Reynolds v. U.S.*, 98 U.S. 145 (1879). The State may justify a limitation on religious liberty by showing that it is essential to the accomplishment of an over-

> riding government interest. *Thomas, supra, Wisconsin v. Yoder,* 406 U.S. 205 (1972, *Gillette v. United States,* 401 U.S. 437 (1971), *Sherbert v. Verner,* 374 U.S. 398 (1963)."
>
> (Appendix A, App. 6)

The Court of Appeals went on to say that at Page 8 of its decision:

> "Finding that the Social Security system serves the public interest by providing a comprehensive nationwide insurance system with a variety of benefits available to all participants, the court held that:
>
> > "***the government's interest in assuring mandatory and continuance participation in and contribution to the Social Security system is very high"*** *Id.*
>
> "The court then considered whether accommodating the Amish belief would unduly interfere with the fulfillment of the government interest and found: '***because the broad public interest in maintaining a sound tax system it is of such a high order religious belief in conflict with the payment of taxes affords no basis of restricting the tax.' "*** *Id.* at 4204. *"Assessments, pursuant to Ohio Revised Code Chapter 4123 are analogous to the mandatory contribu-*

> *tions required by the Social Security Act. In the instant case, the State has an 'overriding governmental interest' in compensating workers' and their dependents for death, occupational disease, and injury occuring in the course of employment.* To accomplish this purpose, the State has enacted comprehensive legislation creating a system which requires support by mandatory contributions by covered employers. *Widespread voluntary coverage would undermine the soundness of the program and be difficult, if not impossible, to administer with the myriad of exceptions flowing from a wide variety of religious beliefs. The assessments imposed upon employers to support the system is uniformly applicable to all, except as the General Assembly provides explicitly otherwise. Thus, we find no constitutionally required exemption for Appellant from the operation of the Workers' Compensation Act."* (Emphasis added)
> (Appendix A, App. 7)

Thus, as can be seen, unlike what Petitioner would lead this Court to believe, the Court of Appeals carefully weighed the Petitioner's contentions that the Workers' Compensation system unnecessarily interfered with and entangled the government in its affairs. It is submitted that *Lee, supra,* is directly on point with the case at bar.

CONCLUSION

This Court, during its last term, decided the issue involved herein. It is respectfully submitted that the petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT

State of Ohio, County of Lorain, ss:

C.A. NO. 3262

VICTORY BAPTIST TEMPLE, INC.,

Plaintiff-Appellant,
vs.

INDUSTRIAL COMMISSION OF OHIO, et al.,
Defendants-Appellees.

APPEAL FROM JUDGMENT ENTERED IN THE COMMON PLEAS COURT COUNTY OF LORAIN, OHIO

CASE NO. 84897 79

DECISION AND JOURNAL ENTRY

Dated: March 24, 1982

This cause was heard January 28, 1982, upon the record in the trial court, and the briefs. It was argued by counsel for the parties and submitted to the court. We have reviewed each assignment of error and make the following disposition:

QUILLIN, J.

Victory Baptist Temple, Inc., plaintiff-appellant, appeals a judgment of the Court of Common Pleas that the Ohio Workers' Compensation Laws as applied to the appellant are constitutional. We affirm.

The stipulations and affidavits of the parties reveal the following facts. The defendants-appellees, the Industrial Commission of Ohio (Commission) and the Bureau of Workers' Compensation (Bureau) are duly authorized agencies of the State of Ohio which are employed to administer the Workers' Compensation Law. R.C. Chapter 4123.

The plaintiff-appellant, Victory Baptist Temple, Inc. (Victory Baptist or Church), is a non-profit corporation organized under the laws of the State of Ohio which operates a church and a Christian day school in Elyria, Ohio. The church school is not separately incorporated. In addition to volunteer help, Victory Baptist has persons who are regularly employed to operate the church and the church day school and who receive financial remuneration for their services.

At appellant's request, appellees conducted a rating inspection and assessed premiums pursuant to the Workers' Compensation Law for those persons who receive remuneration from the church. The Commission notified the church that it must submit the payroll report and remit the assessed premiums to the Commission. Further, the church was informed that if it did not comply with the provisions of the law, enforcement proceedings would be commenced under R.C. 4123.37 and 4123.99 (C).

Victory Baptist refused to submit to these demands on the grounds that the law interfered with the sincerely held religious beliefs of the church and its members. The appellant claims it cannot, in good conscience, contribute church monies intended solely for expenditures for religious purposes to the Workers' Compensation Fund. It asserts that to do so would be a sin. Rather, the church proposes to accomplish the goals of the law by voluntarily caring for their ill or disabled employees.

Appellant brought this action in the court below requesting a declaratory judgment and injunctive relief from the application of the law. Each party filed a motion for summary judgment pursuant to Civ. R. 56. Based on the motions and the accompanying stipulations and affidavits, the trial court issued an order and opinion granting appellees' motion and denying that of appellant. The lower court held: (1) that the state's interest in insuring that fair compensation for an employee injured or killed in the course of his employment is a compelling interest, (2) that R.C. 4123.01 (A) and (B) include churches and their paid employees, (3) that application of the law to Victory Baptist does not violate the freedoms of religion guaranteed in the United States and Ohio Constitutions, and (4) that the provisions of the law itself are the least burdensome methods of accomplishing the compelling state purpose.

ASSIGNMENT OF ERROR 2

> "Upon consideration of the evidence in support of and in opposition to the Industrial Commission's Motion for Summary Judgment, the lower court erred in finding that Victory Baptist is an 'employer' within the meaning of the Workers' Compensation Act and that the protection of its clerical and educational 'employees' is properly governable by the Act."

Relying on the general principle of construing statutes to avoid unnecessary constitutional decisions, the United States Supreme Court in NLRB v Catholic Bishop of Chicago (1979), 440 U.S. 490, 501 held:

"* * *.

"The values enshrined in the First Amendment plainly rank high 'in the scale of our national values.' In keeping with the Court's prudential policy it is incumbent on us to determine whether the Board's exercise of its jurisdiction here would give rise to serious constitutional questions. If so, we must first identify 'the affirmative intention of the Congress clearly expressed' before concluding that the Act grants jurisdiction."

Thus, appellant argues unless the General Assembly expressly includes religious institutions within its definition of "employer" (R.C. 4123.01 (B)) and "employee" (R.C. 4123.01 (A)), the law must be construed to exempt churches and ther ministries from coverage. We do not agree.

Congress did not specifically include church schools in its grant of jurisdiction to the National Labor Relations Board. However, this lack of an express inclusion was not dispositive of the issue before the high court. Rather, the court in Catholic Bishop of Chicago, supra, examined the language and the legislative history of the National Labor Relations Act to determine Congressional intent. In the instant case the language and legislative history admits to no other conclusion than that the General Assembly intended to include churches and their employees within the protection of the Workers' Compensation Law.

Section 35, Article II, of the Ohio Constitution states:

"For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed

> establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom.* * *."

Because its purpose is remedial, the Act must be liberally construed. R.C. 1.11. See also, R.C. 4123.95.

R.C. 4123.01 (A) states in relevant part:

> "As used in Chapter 4123. of the Revised Code:
>
> "(A) 'Employee,' 'workman,' or 'operative' means:
>
> "* * *.
>
> "(2) Every person in the service of any person, firm, or private corporation, including any public service corporation, that (a) employs one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors, * * *.
>
> "(B) 'Employer' means:
>
> "* * *.
>
> "(2) Every person, firm, and private corporation, including any public service corporation, that (a) has in service one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, * * *."

Victory Baptist admits that it is a private corporation and that persons are regularly employed to operate the

church and church day school. These people are paid money by the church for performing these services. Thus, the persons receiving pay for operating the church and school fall within the plain language of the statute's definition of employees. Likewise, the church comes within the statutory definition of an employer.

The Workers' Compensation Law has been characterized by the broadest possible coverage with frequent amendments to insure that no class of employers or employees was unintentially excluded. If the legislature had intended to exclude religious institutions, it had ample opportunity to do so. We believe that the legislature intended for employees of religious institutions to come under the protection of the Act.

ASSIGNMENT OF ERROR 4

> "Upon consideration of the evidence in support of and in opposition to the Industrial Commission's Motion for Summary Judgment, the lower court erred in finding that the application of O.R.C. Chapters 4121 and 4123 of the Revised Code to Victory Baptist is not violative of the First Amendment."

Appellant's contention that the compliance abridges its right to freely exercise its religion is controlled by United States v Lee (1982), — U.S. —, 50 Law Week 4201. In Lee, the appellee, a member of the Old Amish faith, contended that, because the payment of social security taxes violated the tenents of his religion, compulsory participation in the social security system interfered with his free exercise rights. The court agreed that the clash between appellee's religious obligation and his civic obligation was irreconcilable but said:

"* * *.

"The conclusion that there is a conflict between the Amish faith and the obligations imposed by the social security system is only the beginning, however, and not the end of the inquiry. Not all burdens on religion are unconstitutional. See, e.g., Prince v. Massachusetts, 31 U.S. 158 (1944); Reynolds v. United States, 98 U.S. 145 (1879). The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest. Thomas, supra; Wisconsin v. Yoder, 406 U.S. 205 (1972); Gillette v. United States, 401 U.S. 437 (1971); Sherbert v. Verner, 374 U.S. 398 (1963)."

"* * *." Id. at 4203.

Finding that the social security system serves the public interest by providing a comprehensive, nationwide insurance system with a variety of benefits available to all participants, the court held that:

"* * * the government's interest in assuring mandatory and continuous participation in and contribution to the social security system is very high,"

"* * *." Id.

The court then considered whether accommodating the Amish belief would unduly interfere with the fulfillment of the governmental interest and found:

"* * * Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax."

"* * *." Id. at 4204.

Assessments pursuant to R.C. Chapter 4123 are analogous to the mandatory contributions required by the Social Security Act. In the instant case, the state has an "overriding governmental interest" in compensating workers and their dependents for death, occupational disease, and injury occuring during the course of employment. To accomplish this purpose, the state has enacted comprehensive legislation creating a system which requires support by mandatory contributions by covered employers. Widespread voluntary coverage would undermine the soundness of the program and be difficult, if not impossible, to administer with the myriad of exceptions flowing from a wide variety of religious beliefs. The assessments imposed on employers to support the system is uniformly applicable to all, except as the General Assembly provides explicitly otherwise. Thus, we find no constitutionally required exemption for appellant from the operation of the Workers' Compensation Act.

ASSIGNMENTS OF ERROR

"1. Upon consideration of the evidence in support of and in opposition to the Industrial Commission's Motion for Summary Judgment, the lower court erred in finding that O.R.C. Chapters 4121 and 4123 apply to Victory Baptist.

* * *

"3. Upon consideration of the evidence in support of an in opposition to the Industrial Commission's Motion for Summary Judgment, the lower court erred in finding that the protections afforded to workers at Victory Baptist under the Church's Scriptural duty to aid one another in time of need due to accident or illness is 'independable (sic) and illusory.'"

In Lee, supra, the appellee demonstrated the Amish capacity to care for their own. However, despite the fact the Amish make sufficient provision for their dependent members the high court was not persuaded to exempt the appellee from paying social security assessments. In the instant case, Victory Baptist is within the coverage of the Workers' Compensation Act, even though it would aid its workers in time of illness or injury.

There being no genuine issue of material fact between the parties, the trial court properly granted appellee's motion for summary judgment pursuant to Civ. R. 56 (C).

The judgment is affirmed.

The court finds that there were reasonable grounds for this appeal.

We order that a special mandate, directing the County of Lorain Common Pleas Court to carry this judgment into execution, shall issue out of this court. A certified copy of this journal entry shall constitute the mandate, pursuant to App. R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App. R. 22 (E).

Costs taxed to appellant.

Exceptions.

/s/ Edward I. Mahoney
Presiding Judge for the Court

MAHONEY, P.J.
BELL, J.
CONCUR

APPEARANCES:

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